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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/771,444

02/05/2004

Ryosaku Fujisato

Q79233

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23373 7590 11/25/2008  
SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037

EXAMINER

CHAPMAN, GINGER T

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

11/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/771,444	<b>Applicant(s)</b> FUJISATO, RYOSAKU	
	<b>Examiner</b> Ginger T. Chapman	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 5-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 23, 2008 has been entered.

### ***Status of the claims***

2. Claims 13-16 are added, claims 5-12 are withdrawn from consideration as being drawn to a nonelected invention, claims 1-4 and 13-16 are examined on the merits.

### ***Claim Objections***

3. Claim 16 is objected to because of the following informalities: lines 17-18 recite, "is provided, in a covered manner, rotatably provided in a covered manner". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "the rear" in line 3. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 1 recites the limitation "the front end portion" in line 5. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 1 recites the limitation "the tangential direction" in line 7. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 1 recites the limitation "the jetting direction" in lines 9-10. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 2 recites the limitation "the axial center" in line 3. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claim 15 recites the limitation "the front end portion" in line 4. There is insufficient antecedent basis for this limitation in the claim.

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14. Claim 15 recites the limitation "the tangential direction" in line 6. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 15 recites the limitation "the outer circumferential portion" in line 7. There is insufficient antecedent basis for this limitation in the claim. The claim provides antecedent basis for a circumferential wall of the rear part side of the vessel body, but does not provide antecedent basis for an outer circumferential portion of the air/liquid jet-guiding portion.

16. Claim 15 recites the limitation "the jetting direction" in line 8. There is insufficient antecedent basis for this limitation in the claim.

17. Claim 15 recites the limitation "the front part side" in line 11. There is insufficient antecedent basis for this limitation in the claim. The claim provides antecedent basis for a front part side of the vessel body, but does not provide antecedent basis for a front part side of the air/liquid jet-guiding portion.

18. Claim 15 recites the limitation "the axial center" in line 13. There is insufficient antecedent basis for this limitation in the claim.

19. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

20. Claim 16 recites the limitation "the front end portion" in line 4. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 16 recites the limitation "the tangential direction" in line 6. There is insufficient antecedent basis for this limitation in the claim.

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22. Claim 16 recites the limitation "the outer circumferential portion" in line 7. There is insufficient antecedent basis for this limitation in the claim. The claim provides antecedent basis for a circumferential wall of the rear part side of the vessel body, but does not provide antecedent basis for an outer circumferential portion of the air/liquid jet-guiding portion.

23. Claim 16 recites the limitation "the jetting direction" in lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

24. Claim 16 recites the limitation "the front part side" in line 11. There is insufficient antecedent basis for this limitation in the claim. The claim provides antecedent basis for a front part side of the vessel body, but does not provide antecedent basis for a front part side of the air/liquid jet-guiding portion.

25. Claim 16 recites the limitation "the axial center" in lines 13-14. There is insufficient antecedent basis for this limitation in the claim.

26. Claim 16 recites the limitation "the rotating axis" in line 20. There is insufficient antecedent basis for this limitation in the claim.

#### ***Allowable Subject Matter***

27. The indicated allowability of claim 4 is withdrawn in view of the newly discovered reference(s) to Henkin as detailed *infra*. Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 103***

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

30. Claims 1-3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostrov et al (US 6,706,006 B2) in view of Martin (US 6,962,298 B1).

31. With respect to claim 1, as best depicted in Figures 2-3, Kostrov discloses a suction-cleansing device (fig. 2) comprising a vessel body (5) having a hollow portion (7) whose profile is converged from its rear part side to its front part side, the dictionary definition of converged is "bent", thus the device of Kostrov meets the claim language as presently written because, as best depicted in Figure 1 at (5), the device comprises an angle between two parts of the element (5); an air/liquid jetting port (15) secured at the front end portion of the vessel body; a liquid-introducing pipe (3) connected (8) to the circumferential wall of the rear part side of the vessel body in the tangential direction (fig. 2a; c. 3, l. 26 and ll. 50-62); an air/liquid jet guiding portion that is disposed at the outer circumferential portion of the air/liquid jetting port (15) and is widened to open from port toward the jetting direction (9: figs. 2-4); and a flow-out portion composed of notches (9: figs. 2-4) in the front end portion or the air/liquid jet guiding portion.

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32. The examiner notes that it is well-settled that inventor may be own lexicographer. MPEP § 2111.02. Therefore, although the instant claims are directed to “a suction-cleansing device” while the Kostov device is directed to a “hydro-suction vibration bio-stimulator”, the examiner notes that the prior art device satisfies the claimed structural limitations and performs the substantially identical function in the substantially identical manner as described in the following paragraph for clarity:

33. As best depicted in Figures 2 and 3, the air/liquid mixture is swirled in the hollow portion such that the rotation motion of the liquid causes a decrease of pressure and an increase and thus creates cavitation bubbles of air on an air axis formed in the hollow portion thereby causing a suction effect on the users skin which is then sucked into the air/liquid jetting port thereby massaging the skin. The suction of the skin into the jetting port causes the momentary closing of the port, and that, in turn, leads to an increase of pressure inside the hollow portion due to the fluid flow through liquid-introducing pipe temporarily eliminating the suction force. This causes the skin to return to its original un-suctioned state for a moment, then again undergoes the next suction cycle as the process repeats itself.

34. The prior art teaches that the auto-oscillation process of the suction cycles has a frequency, depending on the decrease of pressure inside the hollow portion, which creates a pulsing or vibration effect. This effect is referred to in the instant Specification as a “breathing effect” (c. 3, l. 50 to c. 4, l. 30).

35. The examiner further notes that prior art structure (14) is identified as an “outlet” for creating a suction force in the vicinity of outlet (15) (c. 4, ll. 35-40). However, it is the examiners position that, absent a showing to the contrary, the port (14) allows air to flow both in



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and out of the port as the pressure inside the hollow portion is increased and decreased. Absent evidence to the contrary, Figure 3 appears to depict the above-noted phase of the cycle wherein the pressure inside the hollow is decreased and the skin is suctioned into the jetting port. The examiner position is based on the structure is disclosed as a hole; a hole (unlike a one-way valve, by way of example) will allow two-way flow in and out of the hollow portion depending on whether the periodic suction force is increased causing air flow into (14) or eliminated (air flow out).

36. Kostrov discloses the claimed invention except for the profile shape. As best depicted in Figures 1 and 8, Martin teaches a circular-truncated half-spherical shape (c. 4, l. 43) and having a swelled part at the rear, in the direction of 12, thus providing motivation for such. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the profile of Kostrov shaped as taught by Martin, since Martin teaches, at c. 6, ll. 50-53, that this permits water in the flow path to emerge from the circular body through all or at least a satisfactory number of discharge outlets on the half spherical surface portion of the vessel body.

37. With respect to claim 2, as seen in Figure 3, Kostrov teaches an air self-suction port (14).

38. With respect to claim 3, Kostrov discloses the claimed invention except for the rotating member. Martin, at c. 2, ll. 13-18, expresses the desire for a suction-cleansing device that can be selected to provide different modes of cleansing action. As seen in Figures 1 and 8-9, Martin teaches a suction cleansing device (10) including a rotating member (16) that is attached by being screwed in a threaded portion (106) which is opened and formed at an anterior wall of the vessel body and is rotatably provided in a covered (92) manner (c. 4, ll. 4-10) centering around a

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position deviated from the axial center of the vessel body (70) and air self-suction port (93) that introduces air into the device is formed at a position deviated from the rotating axis of the rotating member. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the prior art device with the rotating member as taught by Martin since Martin states, at c. 4, ll. 4-10, and at c. 3, ll. 56-58, that the advantage of this design is that the rotating member allows the user to selectively adjust the water flow by turning the rotating member.

39. With respect to claim 13, as best depicted in Figures 2 and 4, Kostrov discloses that water flows out notches 9 in the direction of the arrows.

40. Claims 4, 14, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostrov in view of Martin and further in view of Henkin et al (US 5,230,106).

41. With respect to claims 4 and 14, the combination of Kostrov and Martin disclose the claimed invention except for a tank portion provided to cover a rear wall and an air introducing port secured at the tank portion. As best depicted in Figures 10 and 13, Henkin teaches a tank portion 300 at the rear of the vessel body 420 and having an air self suction port 303 (c. 6, ll. 35-37). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device of Kostrov/ Martin as taught by Henkin, since Henkin states, at c. 6, ll. 35-48, that this cooperates with chamber 304 and control knob 130 to provide a mode selector to adjust water flow.

42. With respect to claims 15 and 16, see claims 1-4, *supra*, for detailed analysis of all limitations contained in claims 15 and 16.

***Response to Arguments***

43. Applicant's arguments with respect to claims 1-4 and 13-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

44. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

45. Sollerud (Re. 28,405) teaches a suction-cleansing device including a tank.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571)272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ginger T Chapman/  
Examiner, Art Unit 3761

11/20/08

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761